

**LUCAS COUNTY
LOCAL EMERGENCY PLANNING COMMITTEE
COMPLIANCE COMMITTEE**

POLICY NO. 1001

**Lucas County Compliance Guide
For Hazardous Materials**

**ENFORCEMENT OF
Ohio Revised Code 3750**

March 17, 2016

**LUCAS COUNTY
LOCAL EMERGENCY PLANNING COMMITTEE
COMPLIANCE POLICIES AND PROCEDURES**

PREFACE:

These policies and procedures are established to ensure that violations and/or suspected violations of the reporting requirements as established by State/Federal laws relating to hazardous materials are dealt with in a uniform manner. They shall become effective upon adoption by the Lucas County LEPC. They may be revised and/or amended by an affirmative vote of the majority of the members present at a regular meeting of the LEPC or at a special meeting called for that purpose, in accordance with the LEPC Constitution and By-Laws.

March 17, 2016
Date Adopted



Lucas County LEPC Chairperson

**COMPLIANCE OF SARA, TITLE III
SECTIONS 302, 311, AND 312**

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Lucas County Local Emergency Planning Committee COMPLIANCE OF OHIO REVISED CODE CHAPTER 3750

1.0 BACKGROUND

Ohio Revised Code Chapter 3750 provides that the Lucas County Local Emergency Planning Committee (LEPC) may issue citations for violations of reporting laws. Citations based on timeliness of notifications can include penalties up to \$25,000 per day per first violation. Citations based on failure to report chemical inventories can include penalties up to \$10,000 per day per first violation.

Lucas County LEPC Policy 1001 provides a formal procedure for enforcing ORC 3750. This policy is needed to ensure that all facilities report, as required, to enable the LEPC to develop an effective emergency response plan to safeguard the residents of Lucas County. The penalty Citation Matrices are developed to take the following issues into consideration.

- Prior citations for the same release
- Prior citation for a different release (last three years)
- Release severity
- Delay in notification to LEPC
- Amount of material released
- Current compliance with Right-to-Know filings
- Involvement of hazardous vs. extremely hazardous substances

The considerations listed above are used in the Citation Penalty Formula. Each consideration receives a certain number of points and the points are totaled. The total is then multiplied by either \$100 or \$250 (\$10 or \$25 for voluntary compliance) to determine the Citation amount.

During discussions with the non-compliance party, the LEPC may take into consideration the following factors to reduce the Citation penalty.

- Cooperation of the non-compliant party
- Ability of the party to pay
- Population and workforce density around the release

2.0 COMPLIANCE PROCEDURE

2.1 Discovery/Investigation – Upon discovery of a violation of ORC 3750 sections 05 to 08, the Lucas County LEPC will conduct an investigation to determine if a citation is appropriate. Any official member of the Lucas County LEPC may also request an investigation/determination of a possible violation.

2.2 Citation Calculation - The Lucas County LEPC shall prepare a written citation matrix calculation for each violation.

2.3 Reviews by Compliance Subcommittee – The Lucas County LEPC Compliance Subcommittee shall review the facts, investigation results and proposed matrix citation calculation.

- (i) Open discussion by the Subcommittee
- (ii) Subcommittee will vote on a recommendation to the full LEPC. The Subcommittee may recommend a reduced or increased citation penalty amount based on the considerations listed in the matrix.
- (iii) The Subcommittee's considerations and recommendation will be recorded in meeting minutes.

2.4 Review and Vote by Full LEPC – The Lucas County LEPC Compliance Subcommittee Chair shall summarize the facts of the incident and the Subcommittee's recommendation at the next full LEPC Committee meeting. The full LEPC will vote on issuing a citation and the amount of the citation penalty, based on the Subcommittee's recommendation. The approved citation and the amount of the citation penalty will be sent by the LEPC Chair or Compliance Subcommittee Chair to the cited facility by certified mail, return receipt requested.

2.5 30-Day Challenge Period & Review – The cited Facility has 30 days from the receipt date of the citation notice to make payment arrangements or appeal for financial or other consideration.

- (i) The cited Facility will be given an opportunity to be heard by the Lucas County LEPC Executive Committee
- (ii) The LEPC Executive Committee will discuss the request for consideration and vote on a recommendation to the full LEPC.
- (iii) If no action is taken by the cited Facility within 30 days to challenge or pay the penalty amount, it will increase by the same amount on a daily basis until paid in full or payment arrangements are made.
- (iv) If the cited Facility challenges the citation penalty through written notice, the accruing shall cease on the date of receipt of the letter indicating such challenge.
- (v) This accumulated citation amount shall stay fixed until the legal issue is settled at which time accruing shall resume until paid in full or payment arrangements are made

2.6 Consideration Criteria and Documentation – Consideration of a reduced penalty amount may be extended for the following:

- (i) Cooperation in becoming compliant
- (ii) Ability of the organization to pay due to extenuating circumstances,
- (iii) Application of clean-up (recovery) costs toward the citation amount and
- (iv) Population/workforce density in the potentially exposed area

2.7 Final vote – The LEPC Executive Committee’s recommendation concerning the citation will be presented to the full Lucas County LEPC by the Compliance Subcommittee Chair at the next regularly scheduled meeting.

- (i) The cited Facility will be given an opportunity to be heard during discussion of the issue
- (ii) The full LEPC will vote on the Executive Committee’s recommendation concerning the citation changes. If a change is granted, the LEPC Chair or Compliance Subcommittee Chair will prepare in writing the reasons or conditions for changing the citation.

2.8 Legal Caveat – This procedure is meant to be the flow process for citations. Legal challenges shall be based on the Citation Matrices themselves and Chapter 3750 of the O.R.C. If the cited Facility and the LEPC cannot reach a conclusion to the case, the LEPC reserves the right to forward the case to the Lucas County Prosecutor’s Office for formal legal resolution.

Lucas County Local Emergency Planning Committee Penalty Matrix for Failure to Report Release within 30 Minutes

Facility in Violation:

Date:

HS/EHS Involved:

Authority: Violation of chapter 3750, Section 06(C) of the Ohio Revised Code

Violation - Failure to notify the Lucas County LEPC verbally or by telephone within 30 minutes of a release of a reportable quantity of a hazardous substance

ORC Penalty: Section 3750.20(B): Maximum \$25,000 per day
Section 3750.99(A): \$10,000 to \$25,000/day, and/or
imprisonment for at least 2-4 years
Second offense of Section 3750.99: \$25,000 to \$50,000/day, and/or
imprisonment for at least 2-4 years

Actions to be taken: Upon discovery of a late or non-notification situation, the Lucas County LEPC will conduct an investigation to determine if a citation is appropriate. If deemed appropriate, a recommendation for the citation and penalty amount shall be presented to the LEPC Compliance Subcommittee for approval along with the citation matrix documentation. The Lucas County LEPC Compliance Subcommittee Chair will report the Subcommittee's recommendation at the next full LEPC Committee meeting. If approved by a majority vote of the LEPC members in attendance, the approved citation and the amount of the citation penalty will be sent by the LEPC Chair or Compliance Subcommittee Chair to the cited facility by certified mail, return receipt requested. The amount of the citation shall be paid in full or arrangements payment arrangements within 30 days of receipt of the certified letter. If no action has been taken by the cited Facility within 30 days to pay the penalty amount, it will increase by the same amount on a daily basis until paid in full or payment arrangements are made.

In the event the cited Facility directly or through legal counsel challenges the citation penalty through written notice, the accruing shall cease on the date of receipt of the letter indicating such challenge.

This accumulated citation amount shall stay fixed until the legal issue is settled at which time accruing shall resume until paid in full or payment arrangements are made, if penalty is deemed legally valid.

At the recommendation of the LEPC Compliance Subcommittee or the LEPC Executive Committee and approval by the full LEPC, consideration may be extended to a cited Facility for the following:

- (i) Cooperative attitude in mitigating the release
- (ii) Ability of the organization to pay due to extenuating circumstances, and
- (iii) Application of clean-up (recovery) costs toward the citation amount
- (iv) Population/workforce density in the potentially exposed area (worst case scenario)

Variables to Be Considered In Determining Citation Penalty Amount
Failure to Report Release within 30 Minutes

Variable	Multiplier value	Maximum Point Value	
1. 30-Minute Emergency Notice Submitted		20	Subtotal:
Yes, but late	0		
Incomplete	0.8		
Not submitted	1.0		
2. Delay in Notification		7	Subtotal:
> 1/2 hr < 3 hours	0.1		
> 3 hours < 6 hours	0.4		
>6 hours < 24 hours	0.8		
> 24 hours	1.0		
3. Prior same substance release		30	Subtotal:
No prior release	0		
Yes, Prior release, no citation	0.5		
Yes, Prior release, with citation	1.0		
4. Prior Citation/Other Than Same Substance Release		15	Subtotal:
None	0		
One	0.5		
Two	0.8		
Three or more	1.0		
5. Release severity		9	Subtotal:
Not off property/contained	0		
Released into one element*	0.2		
Released into two elements	0.8		
Released into three elements	0.9		
Released into at least one element and significant wildlife destruction	1.0		
* Elements – air, water, soil			
6. Nature of Released substance		2	Subtotal:
Hazardous/oil	0.1		
Extremely hazardous	1.0		
7. On file for Current Reporting Period		5	Subtotal:
Yes	0		
Yes, but not for released substance	0.8		
No	1.0		
N/A for transportation			
8. Released Quantity: RQ =		6	Subtotal:
1 x RQ	0		
2 x RQ	0.1		
3 x RQ	0.5		
4 x RQ	0.8		
5 x RQ	1.0		

**Variables to Be Considered In Determining Citation Penalty Amount
Failure to Report Release within 30 Minutes**

Variable	Multiplier value	Maximum Point Value	
<u>Formula for Determining Citation Amount</u>			
Each multiplier value times each maximum value			
Add all subtotals		TOTAL =	
Voluntary – total times \$25 = penalty amount		X \$25 =	
Multiply total times \$250 = penalty amount		X \$250 =	

1. Delay of notification is defined as the difference between the time a person at the facility has knowledge of the release and the time notification is given to the Lucas County LEPC. In the event that the LEPC becomes aware of the release through some other means, the citation factor shall double but shall not exceed the total value of seven.
2. The RQ for oil or other petroleum products when defined as a “sheen” on water and reported as the same will make the maximum point value under Release Quantity zero
3. When the RQ for oil or other petroleum products has been reached or exceeded and the amount is known, this amount will be used under Release Quantity as calculated by the formula.

Lucas County Local Emergency Planning Committee Penalty Matrix for Failure to File 30-Day Follow-up Report

Facility in Violation:

Date:

HS/EHS Involved:

Authority: Violation of chapter 3750, Section 06(D) of the Ohio Revised Code

Violation - Failure of the owner or operator of a facility or vessel from which a release of an extremely hazardous substance or hazardous substance occurs in an amount equal to or exceeding the reportable quantity prescribed to submit, but no later than thirty (30) days after the release, a written follow-up emergency notice of the release setting forth and updating the information provided in the verbal thirty (30) minute notice required in 3750.06(C), and including all of the additional information specified in 3750.06(D)

ORC Penalty: Section 3750.20(B): Maximum \$25,000 per day
 Section 3750.99(A): \$10,000 to \$25,000/day, and/or
 imprisonment for at least 2-4 years
 Second offense of Section 3750.99: \$25,000 to \$50,000/day, and/or
 imprisonment for at least 2-4 years

Actions to be taken: Upon discovery of a late or non-reporting situation, the Lucas County LEPC will conduct an investigation to determine if a citation is appropriate. If deemed appropriate, a recommendation for the citation and penalty amount shall be presented to the LEPC Compliance Subcommittee for approval along with the citation matrix documentation. The Lucas County LEPC Compliance Subcommittee Chair will report the Subcommittee's recommendation at the next full LEPC Committee meeting. If approved by a majority vote of the LEPC members in attendance, the approved citation and the amount of the citation penalty will be sent by the LEPC Chair or Compliance Subcommittee Chair to the cited facility by certified mail, return receipt requested. The amount of the citation shall be paid in full or arrangements payment arrangements within 30 days of receipt of the certified letter. If no action has been taken by the cited Facility within 30 days to pay the penalty amount, it will increase by the same amount on a daily basis until paid in full or payment arrangements are made.

In the event the cited Facility directly or through legal counsel challenges the citation penalty through written notice, the accruing shall cease on the date of receipt of the letter indicating such challenge. This accumulated citation amount shall stay fixed until the legal issue is settled at which time accruing shall resume until paid in full or payment arrangements are made, if penalty is deemed legally valid.

At the recommendation of the LEPC Compliance Subcommittee or the LEPC Executive Committee and approval by the full LEPC, consideration may be extended to a cited Facility for the following:

- (i) Cooperative attitude in mitigating the release
- (ii) Ability of the organization to pay due to extenuating circumstances, and
- (iii) Application of clean-up (recovery) costs toward the citation amount
- (iv) Population/workforce density in the potentially exposed area (worst case scenario)

**Variables to Be Considered In Determining Citation Penalty Amount
Failure to File 30-Day Follow-up Report**

Variable	Multiplier value	Maximum Point Value	
1. 30-Day Follow-up Report Submitted		20	Subtotal:
Yes, but late	0		
Incomplete	0.8		
Not submitted	1.0		
2. Delay in Notification		7	Subtotal:
> 30 days < 35 days	0.1		
> 35 days < 40 days	0.4		
> 40 days < 45 days	0.8		
> 45 days	1.0		
3. Prior same substance release		30	Subtotal:
No prior release	0		
Yes, Prior release, no citation	0.5		
Yes, Prior release, with citation	1.0		
4. Prior Citation/Other Than Same Substance Release		15	Subtotal:
None	0		
One	0.5		
Two	0.8		
Three or more	1.0		
5. Release severity		9	Subtotal:
Not off property/contained	0		
Released into one element*	0.2		
Released into two elements	0.8		
Released into three elements	0.9		
Released into at least one element and significant wildlife destruction	1.0		
* Elements – air, water, soil			
6. Nature of Released substance		2	Subtotal:
Hazardous/oil	0.1		
Extremely hazardous	1.0		
7. On file for Current Reporting Period		5	Subtotal:
Yes	0		
Yes, but not for released substance	0.8		
No	1.0		
N/A for transportation			
8. Released Quantity: RQ =		6	Subtotal:
1 x RQ	0		
2 x RQ	0.1		
3 x RQ	0.5		
4 x RQ	0.8		
5 x RQ	1.0		

Variables to Be Considered In Determining Citation Penalty Amount Failure to File 30-Day Follow-up Report

Variable	Multiplier value	Maximum Point Value	
<u>Formula for Determining Citation Amount</u>			
Each multiplier value times each maximum value			
Add all subtotals		TOTAL =	
Voluntary – total times \$25 = penalty amount		X \$25 =	
Multiply total times \$250 = penalty amount		X \$250 =	

1. Delay of notification is defined as the difference in days between the time a person at the facility has knowledge of the release and the time the 30 day written report is given to the Lucas County LEPC. In the event that the LEPC becomes aware of the release through some other means, the citation factor shall double but shall not exceed the total value of seven.
2. The RQ for oil or other petroleum products when defined as a "sheen" on water and reported as the same will make the maximum point value under Release Quantity zero
3. When the RQ for oil or other petroleum products has been reached or exceeded and the amount is known, this amount will be used under Release Quantity as calculated by the formula.

Lucas County Local Emergency Planning Committee Penalty Matrix for Failure to File Chemical Inventory Forms

Facility in Violation:

Date:

HS/EHS Involved:

Authority: Violation of chapter 3750, Section 08(A), (B) of the Ohio Revised Code

Violation - Failure of the owner or operator of a facility who is required to submit a list under 3750.07 (A), (D), or (E), or is authorized to submit MSDSs instead of the list under 3750.07(E) by the first of March to the Lucas County LEPC an emergency and hazardous chemical inventory form containing information required in 3750.08(A), (1)-(4). Failure of an owner or operator of a facility to provide requested information in 3750.08(B), (1)-(7) within thirty (30) days after receiving such a request from the LEPC.

ORC Penalty: Section 3750.20(B): Maximum \$10,000 per day
 Section 3750.99(C),(D): Reckless violation
 \$10,000 to \$25,000/day, and/or
 imprisonment for at least 2-4 years
 Second offense of Section 3750.99: \$25,000 to \$50,000/day, and/or
 imprisonment for at least 2-4 years

Actions to be taken: the Lucas County LEPC will conduct an investigation to determine if a citation is appropriate. If deemed appropriate, a recommendation for the citation and penalty amount shall be presented to the LEPC Compliance Subcommittee for approval along with the citation matrix documentation. The Lucas County LEPC Compliance Subcommittee Chair will report the Subcommittee's recommendation at the next full LEPC Committee meeting. If approved by a majority vote of the LEPC members in attendance, the approved citation and the amount of the citation penalty will be sent by the LEPC Chair or Compliance Subcommittee Chair to the cited facility by certified mail, return receipt requested. The amount of the citation shall be paid in full or arrangements payment arrangements within 30 days of receipt of the certified letter. If no action has been taken by the cited Facility within 30 days to pay the penalty amount, it will increase by the same amount on a daily basis until paid in full or payment arrangements are made.

In the event the cited Facility directly or through legal counsel challenges the citation penalty through written notice, the accruing shall cease on the date of receipt of the letter indicating such challenge. This accumulated citation amount shall stay fixed until the legal issue is settled at which time accruing shall resume until paid in full or payment arrangements are made, if penalty is deemed legally valid.

At the recommendation of the LEPC Compliance Subcommittee or the LEPC Executive Committee and approval by the full LEPC, consideration may be extended to a cited Facility for the following:

- (i) Cooperative attitude in satisfying the legal requirement
- (ii) Ability of the organization to pay due to extenuating circumstances, and
- (iii) Population/workforce density in the potentially exposed area (worst case scenario)

Variables to Be Considered In Determining Citation Penalty Amount Failure to File Chemical Inventory Forms

Variable	Multiplier value	Maximum Point Value	
1a. Delay in providing requested Tier II information		12	Subtotal:
< 15 days	0		
> 15 days < 35 days	0.1		
> 35 days < 40 days	0.4		
> 40 days < 45 days	0.8		
> 45 days	1.0		
1.b Delay in providing annual inventory form/current reporting year			
< 15 days	0.01		
> 15 days < 60 days	0.1		
> 60 days < 90 days	0.4		
> 90 days < 120 days	0.8		
> 120 days < 360 days	1.0		
2. Method of Determining Non-compliance		20	Subtotal:
Voluntary	0		
Involuntary			
Letter notification	0.1		
Site inspection	0.5		
Incident related	1.0		
3. Prior Citation/Same ORC Section 3750.08		30	Subtotal:
Current year	0.1		
1 previous year	0.5		
2 previous years	0.8		
3 previous years	1.0		
4. Prior Citation/Different ORC Section 3750		15	Subtotal:
None	0		
One	0.5		
Two	0.8		
Three/more	1.0		
5. Number of unreported HS and/or EHS		2	Subtotal:
One	0.1		
Two to three	0.3		
Four to five	0.5		
More than five	1.0		

Variables to Be Considered In Determining Citation Penalty Amount Failure to File Chemical Inventory Forms

Variable	Multiplier value	Maximum Point Value	
<u>Formula for Determining Citation Amount</u>			
Each multiplier value times each maximum value			
Add all subtotals		TOTAL =	
Voluntary – total times \$10 = penalty amount		X \$10 =	
Multiply total times \$100 = penalty amount		X \$100 =	

1. Delay is defined as the difference in days between the date on the certified letter requesting the information, receipt requested and the post marked or stamped date on the response from the facility, less thirty (30) days.
2. Delay in providing the annual inventory form is defined as the difference in days between the first day of March for the current year and the date postmarked or stamped on the inventory form.
3. Number of years out of compliance is defined as the difference between the current reporting year and the last three years or the last year reported.

Lucas County Local Emergency Planning Committee Penalty Matrix for Failure to Report a List of Hazardous Chemicals

Facility in Violation:

Date:

HS Involved:

Authority: Violation of chapter 3750, Section 07(A) - (F) of the Ohio Revised Code

Violation - Failure of the owner or operator of a facility 1) that produces, uses, or stores any hazardous chemical in an amount that equals or exceeds the threshold planning quantity (TPQ) applicable to the hazardous chemical to provide a list as prescribed in ORC 3750.07 (A)(1)-(5), (F), or MSDSs for the hazardous chemicals; 2) provide the information required by ORC 3750.07(A) for each component in the mixture that is a hazardous chemical or on the mixture itself; 3) to provide MSDSs for any hazardous chemical on the list submitted under ORC 3750.07(A), (D) or (E) within thirty (30) days after receiving such a request from the LEPC; 4) to prepare and submit to the LEPC a revised list of hazardous chemicals within 3 months of obtaining a new hazardous chemical as prescribed in ORC 3750.07 (D), (F); 5) to submit to the LEPC a revised MSDS for the hazardous chemical about which new information has been discovered within 3 months after discovery of the new information as prescribed in ORC 3750.07 (E), (F)

ORC Penalty: Section 3750.20(B): Maximum \$10,000 per day
 Section 3750.99(C),(D): Reckless violation; \$10,000 to \$25,000/day, and/or
 imprisonment for at least 2-4 years
 Second offense of Section 3750.99: \$25,000 to \$50,000/day, and/or
 imprisonment for at least 2-4 years

Actions to be taken: The Lucas County LEPC will conduct an investigation to determine if a citation is appropriate. If deemed appropriate, a recommendation for the citation and penalty amount shall be presented to the LEPC Compliance Subcommittee for approval along with the citation matrix documentation. The Lucas County LEPC Compliance Subcommittee Chair will report the Subcommittee's recommendation at the next full LEPC Committee meeting. If approved by a majority vote of the LEPC members in attendance, the approved citation and the amount of the citation penalty will be sent by the LEPC to the cited facility by certified mail, return receipt requested. The amount of the citation shall be paid in full or arrangements payment arrangements within 30 days of receipt of the certified letter. If no action has been taken by the cited Facility within 30 days to pay the penalty amount, it will increase by the same amount on a daily basis until paid in full or payment arrangements are made.

In the event the cited Facility directly or through legal counsel challenges the citation penalty through written notice, the accruing shall cease on the date of receipt of the letter indicating such challenge. This accumulated citation amount shall stay fixed until the legal issue is settled at which time accruing shall resume until paid in full or payment arrangements are made, if penalty is deemed legally valid. At the recommendation of the LEPC Compliance Subcommittee or the LEPC Executive Committee and approval by the full LEPC, consideration may be extended to a cited Facility for the following:

- (i) Cooperative attitude in satisfying the legal requirement
- (ii) Ability of the organization to pay due to extenuating circumstances, and
- (iii) Population/workforce density in the potentially exposed area (worst case scenario)

**Variables to Be Considered In Determining Citation Penalty Amount
Failure to Report a List of Hazardous Chemicals**

Variable	Multiplier value	Maximum Point Value	
1a. Delay in providing initial list or MSDSs		16	Subtotal:
< 15 days	0		
> 15 days < 60 days	0.1		
> 60 days < 90 days	0.4		
> 90 days < 120 days	0.8		
> 120 days	1.0		
1.b Delay in providing a requested list or MSDSs			
< 15 days	0		
> 15 days < 35 days	0.1		
> 35 days < 40 days	0.4		
> 40 days < 45 days	0.8		
> 45 days	1.0		
1c. Delay in submitting revised list with new information			
< 3 months	0		
> 3 months < 4 months	0.1		
> 4 months < 5 months	0.4		
> 5 months < 6 months	0.8		
> 6 months	1.0		
1d. Delay in submitting revised MSDS with new information			
< 3 months	0		
> 3 months < 4 months	0.1		
> 4 months < 5 months	0.4		
> 5 months < 6 months	0.8		
> 6 months	1.0		
2. Method of Determining Non-compliance		20	Subtotal:
Voluntary	0		
Involuntary			
Letter notification	0.01		
Site inspection	0.1		
Incident related	1.0		
3. On file for current reporting period		5	Subtotal:
Yes	0		
Yes, but not for HS in question	0.8		
No	1.0		
4. Number of unreported HS		2	Subtotal:
One	0		
Two to three	0.1		
Four to five	0.5		
More than five	1.0		

**Variables to Be Considered In Determining Citation Penalty Amount
Failure to Report a List of Hazardous Chemicals**

Variable	Multiplier value	Maximum Point Value	
5. Amount of HS in excess of TPQ		6	Subtotal:
> 1 < 2 x TPQ	0		
> 2 < 3 x TPQ	0.1		
> 3 < 4 x TPQ	0.5		
> 4 < 5 x TPQ	0.8		
> 5 x TPQ	1.0		
6. Prior Citation/Same ORC Section 3750.07		30	Subtotal:
None	0		
Yes	1.0		
4. Prior Citation/Different ORC Section 3750		15	Subtotal:
None	0		
One	0.5		
Two	0.8		
Three/more	1.0		
<u>Formula for Determining Citation Amount</u>			
Each multiplier value times each maximum value			
Add all subtotals		TOTAL =	
Voluntary – total times \$10 = penalty amount		X \$10 =	
Multiply total times \$100 = penalty amount		X \$100 =	

1. Delay for initial due date is defined as the difference in days between the date the initial list was due and the post mark or stamped date the list is received by the LEPC.
2. Delay for request is defined as the difference in days between the date the request for MSDS was sent certified mail receipt requested and the postmarked or stamped date received by the LEPC, less thirty (30) days.
3. Delay for discovery of new information is defined as the difference in calendar months between the day and month the discovery of new information is made by the owner or operator of the facility and the day and month the revised list is postmarked or stamped received by the LEPC, less three (3) calendar months.

Lucas County Local Emergency Planning Committee Penalty Matrix for Failure to Report Extremely Hazardous Substances

Facility in Violation:

Date:

HS Involved:

Authority: Violation of chapter 3750, Section 05(A) - (E) of the Ohio Revised Code

Violation - Failure of the owner or operator of a facility that has present any extremely hazardous substances (EHS) in an amount that exceeds the chemical specific threshold planning quantity (TPQ) to notify the LEPC within sixty (60) days after first acquiring the substance; and/or within sixty (60) days of exceeding the chemical specific TPQ for an EHS. Failure to provide the LEPC with the name of the person who will act as the facility emergency coordinator within sixty (60) days after first acquiring the EHS. Failure of the owner or operator of a facility to promptly provide to the LEPC the information requested by the LEPC for developing and implementing the Chemical Emergency Response and Preparedness Plan for the district.

ORC Penalty: Section 3750.20(B): Maximum \$10,000 per day
 Section 3750.99(C),(D): Reckless violation; \$10,000 to \$25,000/day, and/or
 imprisonment for at least 2-4 years
 Second offense of Section 3750.99: \$25,000 to \$50,000/day, and/or
 imprisonment for at least 2-4 years

Actions to be taken: The Lucas County LEPC will conduct an investigation to determine if a citation is appropriate. If deemed appropriate, a recommendation for the citation and penalty amount shall be presented to the LEPC Compliance Subcommittee for approval along with the citation matrix documentation. The Lucas County LEPC Compliance Subcommittee Chair will report the Subcommittee's recommendation at the next full LEPC Committee meeting. If approved by a majority vote of the LEPC members in attendance, the approved citation and the amount of the citation penalty will be sent by the LEPC Chair or Compliance Subcommittee Chair to the cited facility by certified mail, return receipt requested. The amount of the citation shall be paid in full or arrangements payment arrangements within 30 days of receipt of the certified letter. If no action has been taken by the cited Facility within 30 days to pay the penalty amount, it will increase by the same amount on a daily basis until paid in full or payment arrangements are made.

In the event the cited Facility directly or through legal counsel challenges the citation penalty through written notice, the accruing shall cease on the date of receipt of the letter indicating such challenge. This accumulated citation amount shall stay fixed until the legal issue is settled at which time accruing shall resume until paid in full or payment arrangements are made, if penalty is deemed legally valid.

At the recommendation of the LEPC Compliance Subcommittee or the LEPC Executive Committee and approval by the full LEPC, consideration may be extended to a cited Facility for the following:

- (i) Cooperative attitude in satisfying the legal requirement
- (ii) Ability of the organization to pay due to extenuating circumstances, and
- (iii) Population/workforce density in the potentially exposed area (worst case scenario)

**Variables to Be Considered In Determining Citation Penalty Amount
Failure to Report Extremely Hazardous Substances (EHS)**

Variable	Multiplier value	Maximum Point Value	
1a. Time to notify LEPC of required (1 st time) Facility Emergency Coordinator		8	Subtotal:
< 60 days	0		
> 60 days < 90 days	0.1		
> 90 days < 120 days	0.2		
> 120 days < 180 days	0.5		
> 180 days < 240 days	0.9		
> 240 days	1.0		
1.b Time to notify LEPC of new Facility Emergency Coordinator			
< 10 days	0		
> 11 days < 19 days	0.1		
> 20 days < 29 days	0.5		
> 30 days	1.0		
2. Time to provide LEPC any other requested planning information		4	Subtotal:
< 10 days	0		
> 11 days < 19 days	0.1		
> 20 days < 29 days	0.5		
> 30 days	1.0		
3. Time until LEPC was notified of an EHS over chemical-specific TPQ		4	
< 60 days	0		
> 60 days < 90 days	0.1		
> 90 days < 120 days	0.2		
> 120 days < 180 days	0.5		
> 180 days < 240 days	0.9		
> 240 days	1.0		
4. Method of Determining Non-compliance		20	Subtotal:
Voluntary	0		
Involuntary			
Letter notification	0.01		
Site inspection	0.1		
Incident related	1.0		
5. On file for current reporting period		5	Subtotal:
Yes	0		
Yes, but not for EHS in question	0.8		
No	1.0		
6. Number of unreported EHS		2	Subtotal:
One	0		
Two to three	0.1		
Four to five	0.5		
More than five	1.0		

**Variables to Be Considered In Determining Citation Penalty Amount
Failure to Report a List of Hazardous Substances (EHS)**

Variable	Multiplier value	Maximum Point Value	
7. Amount of EHS in excess of TPQ		6	Subtotal:
1 x TPQ	0		
2 x TPQ	0.1		
3 x TPQ	0.5		
4 x TPQ	0.8		
5 or more x TPQ	1.0		
6. Prior Citation/Same ORC Section 3750.07		30	Subtotal:
None	0		
Yes	1.0		
4. Prior Citation/Different ORC Section 3750		15	Subtotal:
None	0		
One	0.5		
Two	0.8		
Three/more	1.0		
<u>Formula for Determining Citation Amount</u>			
Each multiplier value times each maximum value			
Add all subtotals	TOTAL =		
Voluntary – total times \$10 = penalty amount	X \$10 =		
Multiply total times \$100 = penalty amount	X \$100 =		

1. Elapsed time is defined as the difference in days between the date the previous facility emergency coordinator stopped being officially responsible for the facility's position and the date the LEPC is notified of the name of the new contact.
2. Elapsed time is defined as the difference in days between the initial date the LEPC requested information (certified mail receipt requested) and the postmarked or stamped date received by the LEPC.
3. Elapsed time is defined as the difference in days between the date the facility initially exceeds the TPQ and the date the LEPC is notified about such information.
4. Elapsed time is defined as the difference in days between the date the facility first acquires an EHS exceeding the TPQ on site and the date the LEPC is notified of such information or the facility's emergency coordinator's name for the first time.

Date

Name

Address

City, State, Zip

**RE: NOTICE OF VIOLATION/PENALTY CITATION
OEPA Spill ID #xxxx-48-xxxx**

Dear Sir/Madam:

As established in Ohio Revised Code Section 3750 and Lucas County Local Emergency Planning Committee (LEPC) Policy #1001, penalties may be levied against companies that fail to make written (*or verbal*) notification for spills and/or accidental releases. It has been determined that your company/facility did not make the required thirty (30) day written follow-up report (*and/or 30 minute verbal notification*) for a release of (*description*) at (*location*) on (*date of spill*).

The LEPC has voted on and approved a citation for this Notice of Violation. Ohio law allows for penalties up to \$25,000 per day for failure to report. Your citation penalty amount is detailed on the next page. Please be aware that you are still required to submit the required *report/notice* as well as pay the citation amount within 30 days of the date of this letter. Any delay in filing this information or paying the penalty amount after the deadline may double your citation penalty amount daily. Enclosed is a copy of the LEPC Compliance Policy for your review, please contact our office with any questions.

Please submit your written notification to:

Attention: Emergency Coordinator Lucas County LEPC,
2144 Monroe St., Toledo, Ohio 43604
Fax: 419-213-6550

Sincerely,

Name

Title

Lucas County LEPC

Encl.

Sample Citation for Failure to File 30-Day Report

Variable	Multiplier value	Maximum Point Value	Assigned Points
1. 30-Day Follow-up Report Not Submitted	1.0	20	20
2. Delay in Notification > 40 days < 45 days	0.8	7	5.6
3. No Prior same substance release	0	30	0
4. Prior Citation/Other Than Same Substance Release	0	15	0
5. Released into one element - soil	0.2	9	1.8
6. Nature of Released substance Hazardous/oil	0.1	2	0.2
7. On file for Current Reporting Period N/A for transportation	0	5	0
8. Released Quantity: RQ = 2 x RQ	0.1	6	0.6

Formula for Determining Citation Amount

Each multiplier value times each maximum value

Add all subtotals

TOTAL = 28.4

Voluntary – total times \$25 = penalty amount

X \$25 =

Multiply total times \$250 = penalty amount

X \$250 = \$7,100